

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

Aiden Potts,

Plaintiff,

v.

National Lending Associates, Inc.
d/b/a Education Loan Source,

Defendant.

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: Civil Action No.: 4:13-cv-00087
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: **COMPLAINT**
: **JURY**
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For this Complaint, the Plaintiff, Aiden Potts, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Telephone Consumer Protection Act, 47 U.S.C. § 227, et seq. (the "TCPA").
2. This Court has original jurisdiction over Plaintiff's TCPA claims. Mims v. Arrow Fin. Serv., LLC, 132 S.Ct. 740 (2012).
3. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
4. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that Defendants transact business here and a substantial portion of the acts giving rise to this action occurred here.

PARTIES

5. The Plaintiff, Aiden Potts ("Plaintiff"), is an adult individual residing in Gainesville, Texas.

6. Defendant National Lending Associates, Inc. d/b/a Education Loan Source (“NLA”) is a California business entity with an address of 11526 Sorrento Valley Road, Suite G, San Diego, California 92121.

FACTS

7. On or around January 16, 2013, Defendant began contacting Plaintiff by placing calls using an automated telephone dialer system with an artificial or prerecorded voice (hereafter “Robocalls”) to Plaintiff’s cellular phone.

8. Plaintiff has no prior business relationship with Defendant.

9. When Plaintiff answered Defendant’s Robocalls, Plaintiff heard a period of silence only after which a live representative came on the line.

10. During the initial phone conversation and all those thereafter, Plaintiff informed Defendant that he never consented to be contacted by Defendant and requested that Defendant cease all Robocalls.

11. During one such instance, Defendant rudely replied, “well, why don’t you just ignore the calls?”

12. Despite this request, Defendant continued to place numerous Robocalls throughout the day to Plaintiff.

13. On several occasions, Plaintiff, out of frustration, called Defendant and followed Defendant’s prompt to have his number removed from their calling list.

14. Nonetheless, Defendant continued to place Robocalls to Plaintiff at a harassing rate.

A. Plaintiff Suffered Actual Damages

15. The Plaintiff has suffered and continues to suffer actual damages as a result of the Defendant's unlawful conduct.

16. As a direct consequence of the Defendant's acts, practices and conduct, the Plaintiff suffered and continues to suffer from anger, anxiety, emotional distress and frustration.

COUNT I

**VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT –
47 U.S.C. § 227, et seq.**

17. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

18. Defendant contacted Plaintiff using an automatic telephone dialing system and/or by using a prerecorded or artificial message on a cellular telephone of 47 U.S.C. § 227(b)(1)(A)(iii).

19. Plaintiff either never provided express consent to Defendant or the Creditor to call his cellular telephone number, or Plaintiff revoked his consent to be contacted by Defendant on his cellular telephone by his repeated demands to cease calling his cellular telephone.

20. The calls from Defendant to Plaintiff were not placed for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

21. Each of the aforementioned calls made by Defendant constitutes a negligent or intentional violation of the TCPA, including each of the aforementioned provisions of 47 U.S.C. § 227, et. seq.

22. As a result of each of Defendant's negligent violations of the TCPA, Plaintiff is entitled to an award of \$500.00 in statutory damages for each call in violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B).

23. As a result of each of Defendant's knowing and/or willful violations of the TCPA, Plaintiff is entitled to an award of treble damages in an amount up to \$1,500.00 for each and every violation of the TCPA pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II

INVASION OF PRIVACY BY INTRUSION INTO PRIVATE AFFAIRS

24. The Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

25. The Restatement of Torts, Second, § 652(b) defines intrusion upon seclusion as, "One who intentionally intrudes...upon the solitude or seclusion of another, or his private affairs or concerns, is subject to liability to the other for invasion of privacy, if the intrusion would be highly offensive to a reasonable person."

26. Texas further recognizes the Plaintiff's right to be free from invasions of privacy, thus the Defendant violated Texas state law.

27. The Defendant intentionally intruded upon the Plaintiff's right to privacy by continually harassing the Plaintiff with the above-referenced Robocalls.

28. The telephone calls made by the Defendants to the Plaintiff were so persistent and repeated with such frequency as to be considered, "hounding the plaintiff," and, "a substantial burden to her existence," thus satisfying the Restatement of Torts, Second, § 652(b) requirement for an invasion of privacy.

29. As a result of the intrusions and invasions, the Plaintiff is entitled to actual damages in an amount to be determined at trial from the Defendant.

30. All acts of the Defendant and its agents were committed with malice, intent, wantonness, and recklessness, and as such, the Defendant is subject to punitive damages.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff prays that judgment be entered against the

Defendant:

1. Statutory damages for each violation, pursuant to 47 U.S.C. § 227(b)(3)(B) & (C);
2. Attorney's costs and fees; and
3. Such other and further relief as may be just and proper.

TRIAL BY JURY DEMANDED ON ALL COUNTS

Dated: February 15, 2013

Respectfully submitted,

By /s/ Jody B. Burton

Jody B. Burton, Esq.
Bar No.: 71681
LEMBERG & ASSOCIATES L.L.C.
1100 Summer Street, 3rd Floor
Stamford, CT 06905
Telephone: (203) 653-2250
Facsimile: (203) 653-3424
E-mail: jburton@lemborglaw.com
Attorneys for Plaintiff